

Congress of the United States
Washington, DC 20515

November 10, 2014

The Honorable Thomas Winkowski
Acting Director
U.S. Immigration and Customs Enforcement
500 12th Street, SW
Washington, DC 20536

Dear Director Winkowski:

We write to express our concerns regarding information recently reported in a *USA Today* news article that shows former Immigration and Customs Enforcement (ICE) Director John Morton failed to properly make the distinction to Congress between migrants released as a result of the sequester and those released as a result of the *Zadvydas v. Davis* Supreme Court decision. Mr. Morton's actions raise serious concerns about how your agency communicates with Congress, and whether that information can be considered reliable and truthful.

Section 236 of the Immigration and Nationality Act (INA) protects public safety by granting the Department of Homeland Security broad authority to detain criminal aliens during their removal proceedings when they have been previously convicted of offenses involving moral turpitude, aggravated felonies, controlled substances offenses, firearms offenses, and other dangerous crimes. This provision of the INA ensures that migrants with serious criminal backgrounds do not have an opportunity to further flaunt our laws while also protecting the safety of U.S. citizens, including our constituents across Texas and border regions like El Paso. Yet, ICE records indicate that some migrant detainees released from the agency's custody during the past two Fiscal Years were charged with aggravated kidnapping and sexually assaulting a child, sexual assaults, armed assaults or assaulting police officers, and conspiracy to commit homicide, among others.

While we understand that ICE must make difficult decisions about how to manage the detainee population, we have a duty to provide oversight of those decisions to protect the safety of our constituents. We ask that you work with us to help re-establish a level of trust between Congress and your agency by providing the following information:

1. A detailed description of how ICE categorizes individual criminal migrant detainees based on their criminal background (e.g. Level I, Level II, or Level III classification);
2. The total number of migrant detainees ICE released into the area of responsibility that includes the State of Texas and the City of El Paso during Fiscal Years 2013 and 2014 ;
3. Of the total number of migrant detainees released in Texas during Fiscal Years 2013 and 2014, the number of such detainees released as a result of the *Zadvydas v. Davis* Supreme Court decision, or other internal policy briefs developed by ICE, including information on:

- a. What criminal convictions, if any, were each of these detainees charged or convicted with prior to their release;
 - b. Whether specific measures are in place to ensure that these released detainees do not recidivate and are present at future immigration court proceedings; and
 - c. Whether criminal detainees covered by the *Zadvydas* decision were held for the full time period allowed under the law;
4. Of the total number of migrant detainees released in Texas during Fiscal Years 2013 and 2014, the number of migrant detainees released for reasons other than the *Zadvydas v. Davis* Supreme Court decision, including information on:
- a. What criminal convictions, if any, were each of these detainees charged or convicted with prior to their release, including a detailed breakdown of the types of offenses and the number of released detainees who were convicted of each offense;
 - b. How ICE populated this list of migrant detainees that were released and what criteria was used to populate the list;
 - c. What information ICE evaluated when determining whether or not to release an individual migrant detainee;
 - d. Whether ICE released any migrant detainees with a criminal record instead of a non-criminal migrant detainee who was also eligible for release;
 - e. Whether there are any circumstances under which it is acceptable to release a migrant detainee with a serious (Level I or Level II) felony conviction instead of a non-criminal migrant detainee who is also eligible for release; and
 - f. If ICE "re-detained" any of the previously released migrant detainees as a result of a reevaluation of their criminal background? If so, how many.

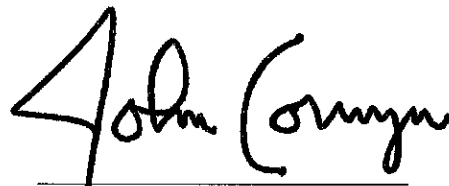
Lastly, our offices had the opportunity to speak with Deputy Executive Associate Director for the Office of Enforcement and Removal Operations Tim Robbins on October 29, 2014 to initially address the concerns outlined in this letter. During our phone call, Mr. Robbins informed us that ICE is developing an automated system that will allow the agency to notify state and local law enforcement when migrant detainees with serious criminal records are released into their areas of responsibility. ICE is also considering capabilities to provide notice to victims that their aggressor(s) will be released into the community. Accordingly, we request that local law enforcement from El Paso and other Texas jurisdictions (e.g. District Attorney, Sherriff, Police Chief etc.) be brought into this process so their expertise may help inform your agency's development of the notification system.

Thank you for your consideration of our requests and for your service to our country. We look forward to working with your agency on these issues.

Sincerely,



BETO O'ROURKE
United States Congressman



JOHN CORNYN
United States Senator